

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1375 of 2023

Arising Out of PS. Case No.-185 Year-2021 Thana- PHULWARISHARIF District- Patna

1. Rinki Kumari Wife of Rajesh Kumar Ray Resident of village - Shambhu Chhapra, Post - Basahi, P.S. - Baniyapur, Distt. - Saran, D/o Mokhtar Singh, Resident of BMP -16, Khagaul, Phulwarisharif, Patna, Bihar, Pin 801105
2. Sanjeet Kumar Son of Mokhtar Singh Resident of village - Dhanesh Chhapra, Hafizpur, Saran, Bihar, Pin 841422

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna
2. The Senior Superintendent of Police, Patna
3. The Officer Incharge, Phulwarisharif, Patna
4. Ram Subhag Singh Son of Late Ram Sujjan Singh Resident of village - Painal, P.S. - Bihta, Distt. - Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sarva Deo Singh, Adv.
For the State : Md. Iqbal Asif Niazi, AC to G.P-5

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

5 04-02-2025 Section 55 of the Transfer of Property Act deals with the rights and liabilities of buyer and seller. Sub-section (1) of Section 55 states:-

“Section 55 (1) The seller is bound—

(a) to disclose to the buyer any material defect in the property or in the seller’s title thereto of which the seller is, and the buyer is not, aware, and which the



*buyer could not with ordinary care discover;
(b) to produce to the buyer on his
request for examination all documents of
title relating to the property which are in the
seller's possession or power;.*”

2. Similarly Section 55(5) (a) states that:-

*“Section 55 (5)- The buyer is
bound—*

*(a) to disclose to the seller any
fact as to the nature or extent of the seller's
interest in the property of which the buyer is
aware, but of which he has reason to believe
that the seller is not aware, and which
materially increases the value of such
interest;.*”

3. In the instant case, the petitioner no. 1 is the buyer of a piece of land measuring about 3.125 decimals, out of 1.56/2 decimal of land recorded in Jamabandi No. 73-460, Khata No. 103, Khesra No. 139, Thana No. 60, Tauzi No. 5196. Petitioner no. 2 is the witness to the sale-deed, executed in favour of petitioner no. 1, by one Dharmendra Kumar and Pappu Kumar, 2 out of 4 accused persons.

4. The de facto complainant of this case is Ram Shubhag Singh, who alleged in his F.I.R. that the aforesaid land is the ancestral land of the de facto complainant. Originally one Mithila Singh was the owner of the said land and after his death,



the de facto complainant and other inherited the said property.

5. It is submitted by the learned Advocate on behalf of the petitioners that accused no. 3, namely, Pappu Kumar forged certain false documents in the name of Dharmendra Kumar, wherein the original owner Mithila Singh was shown as the grand-father of Dharmendra Kumar and the property was sold to Rinki Kumari, petitioner no. 1. Petitioner no.2 was the witness to the execution of the said sale-deed. It is submitted by the learned Advocate for the petitioner that she is an illiterate village lady having no knowledge about the ownership with regard to the landed property and when Dharmendra Kumar and other accused persons impersonate before her as the real owner of the property, he purchased the said land. It is also submitted by the learned Advocate for the petitioners that de facto complainant has already filed a suit for cancellation of the sale-deed by virtue of which the petitioners purchased the property.

6. According to the petitioners, the dispute between the parties is essentially civil in nature and no criminal liability can be attributed against the petitioners, so the F.I.R. may be quashed against them.

7. In *Neeharika Infrastructure Private Limited Vrs. State of Maharashtra*, reported in *2021 SCC Online 315*, a



three Judges Bench of the Hon'ble Supreme Court lays down the following principles of law:-

“57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;



vi) *Criminal proceedings ought not to be scuttled at the initial stage;*

vii) *Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;*

viii) *Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.*

ix) *The functions of the judiciary and the police are complementary, not overlapping;*

x) *Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*

xi) *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*

xii) *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR*



does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”



8. In the instant case, on the basis of the complaint submitted by Ram Shubag Singh, informant, Police registered a case under Sections 419/420/467/468/469/471/120(B)/506 of the I.P.C. against both the sellers, buyers and the witnesses, who identified the parties at the time of execution of the sale-deed.

9. It is contended by the learned Advocate for the petitioners with reference to the decision of the Hon'ble Supreme Court in *Usha Chakraborty And Another Vrs. State of West Bengal And Another*, reported in *2023 SCC Online SC* that the entire dispute relating to sale of the property in question is of civil nature. The De facto complainant had already approached the jurisdictional civil court for cancellation of deed by instituting a civil suit and it is pending. It is further contended that the complainant has been using the criminal proceeding as a weapon of harassment against the petitioners. Therefore, the F.I.R. is liable to be quashed as against the present petitioners.

10. Learned Advocate on behalf of the State/respondents takes me to the supplementary affidavit filed by the petitioners, wherein the petitioners have annexed at page no. 23 of the supplementary affidavit a copy of the Land Revenue (Jamabandi), where the property lies in the name of



Mithila Singh. Indisputably, Mithila Singh is the grand-father of the complainant. Before purchasing the land, the petitioner was aware that the property in question stands in the name of Mithila Singh. In spite of such knowledge, she extended her hands with other accused persons, who admittedly submitted forged documents to prove the ownership of the seller Dharmendra Kumar and illegally sold out the property.

11. It is needless to say that it is for the Investigating Officer to consider as to whether the petitioners were the party to the offence of cheating and forgery or not, can only be decided during investigation. This Court cannot curtail the investigation of this case, specially when it is ascertained from the submission made by the learned Advocate for the petitioner that the accused persons created a false Company in the name and style of Madhuban City Developers Private Limited and sold out plots of other persons by committing cheating and forgery.

12. It is to be looked into in course of investigation, whether the petitioners are the parties of cheating and forgery or not.

13. In view of such circumstances, I am not inclined to quash the F.I.R.



14. The instant Criminal Writ Petition is thus dismissed.

(Bibek Chaudhuri, J)

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